



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/560,788	04/28/2000	Wesley A. Witt	2480	5145

7590 05/10/2005

Law Offices Of Albert S. Michalik, PLLC  
704-228th Ave. NE  
Suite 193  
Sammamish, WA 98074

EXAMINER

REVAK, CHRISTOPHER A

ART UNIT PAPER NUMBER

2131

DATE MAILED: 05/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/560,788

Applicant(s)

WITT ET AL.

Examiner

Christopher A. Revak

Art Unit

2131

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-17,19-24,26-35,37-39 and 46-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,20,31 and 46-48 is/are rejected.
- 7) ☒ Claim(s) 2-4,6-17,19,21-24,26-30,32-35,37-39,49 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 April 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Based upon the applicant's amendments and arguments pertaining to independent claims, the examiner has found them to be persuasive and the rejection of the claims over the prior art of record is hereby withdrawn.
2. The applicant has indicated in the most recent response that a terminal disclaimer would be filed when the claims have been indicated as being allowable. The applicant is advised to file a terminal disclaimer to overcome the double patenting rejection.

### *Double Patenting*

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1,20,31, and 46-48 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,10,12, and 15

of U.S. Patent No. 6,618,735. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1,20,31, and 46-48 of the instant application are envisioned by patent claims 1,10,12, and 15 in that claims 1,10,12, and 15 of the patent contains all the limitations of claims 1,20,31, and 46-48. Claims 1,20,31, and 46-48 of the instant application therefore are not patentably distinct from the earlier patent claims and as such, are unpatentable for obvious-type double patenting.

***Allowable Subject Matter***

5. Claims 1-4,6-17,19-24,26-35,37-39 and 46-49 are allowed over the prior art of record. Claims 1,20,31, and 46-48 are still rejected under obviousness-type double patenting and the application would be allowable upon submission of a terminal disclaimer as the applicant has agreed to file upon indication of allowable subject matter.

6. The following is a statement of reasons for the indication of allowable subject matter:

As per claims 1, it was not found to be taught in the prior art of determining whether a possible change to a protected file is valid by verifying the file and if not valid, preventing the possible change from being implemented including discarding the information indicative of the possible change and returning a success to a component.

As per claim 20, it was not found to be taught in the prior art of determining whether a possible change to a protected file is an exception case. If not an exception

case, determining whether the possible change is valid by verifying the file and if not valid, preventing the possible change from being implemented and returning a success to a component.

As per claim 31, it was not found to be taught in the prior art of determining whether a possible change to a protected file is valid by verifying the file and if not valid, preventing the possible change from being implemented including discarding the possible change.

As per claim 46, it was not found to be taught in the prior art of determining if a possible change may be changed to a protected file, verifying whether the possible change is valid and preventing the possible change from being implemented by locating valid data in a system cache and copying the valid data over changed data when the possible change is not valid.

As per claim 47, it was not found to be taught in the prior art of determining if a possible change may be changed to a protected file, verifying whether the possible change is valid and preventing the possible change from being implemented by locating valid data at a network share and copying the valid data over the changed data when the possible change is not valid.

As per claim 48, it was not found to be taught in the prior art of determining if a possible change may be changed to a protected file, verifying whether the possible change is valid and preventing the possible change from being implemented by locating valid data in a recorded medium and copying the valid data over changed data when the possible change is not valid.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Rosen, U.S. Patent 6,205,436 discloses of performing money transfers on a provisional basis until the transfer is committed, then the transfer is no longer provisional.

Rosen, U.S. Patent 5,703,949 discloses of performing money transfers on a provisional basis until the transfer is committed, then the transfer is no longer provisional.

Rosen, U.S. Patent 5,557,518 discloses of performing money transfers on a provisional basis until the transfer is committed, then the transfer is no longer provisional.

Scot et al, "Special Report: Inside Windows Me Beta 3" discloses of updating system files and when an update is available, an icon is displayed in the system tray and permission is asked in order to install the update.

Geyer, "Software enhances flash efficiency" discloses of updating a file wherein the old version is never erased before the new version has been written and verified.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher A. Revak whose telephone number is 571-272-3794. The examiner can normally be reached on Monday-Friday, 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 571-272-3795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher Revak

*CR*  
5/5/05

Application/Control Number: 09/560,788  
Art Unit: 2131

Page 7

AU 2131

CR

*CM*

May 5, 2005